



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

IN REPLY REFER TO:
7202.4-OS-2018-00583

December 3, 2019

Via email: 47812-19277863@requests.muckrock.com

Bryant Sewell
MuckRock News
DEPT MR 47812
411A Highland Avenue
Somerville, MA 02144

Dear Mr. Sewell:

On, January 19, 2018, you filed a Freedom of Information Act (FOIA) request seeking the following:

The most recent copy of the Department of the Interior's Planning for Potential Infrastructure Initiative. Please limit this search to Jan 1, 2017, and Jan 19, 2018.

Your request was received in the Office of the Secretary FOIA office on January 19, 2018, and assigned control number **OS-2018-00583**. Accordingly, we are writing today to respond to your request on behalf of the Office of the Secretary. Please find attached one file consisting of 3 pages; all of which contain redactions as described below.

Exemption 5 of the FOIA (5 U.S.C. § 552(b)(5)) under the following privilege:

Presidential Communications Privilege

The presidential communications privilege “preserves the President’s ability to obtain candid and informed opinions from his advisors and to make decisions confidentially.” *Loving v. Dep’t of Def.*, 550 F.3d 32, 37 (D.C. Cir. 2008); *see also In re Sealed Case*, 121 F.3d 729, 750 (D.C. Cir. 1997) (“[T]he privilege itself is rooted in the need for confidentiality to ensure that presidential decisionmaking is of the highest caliber, informed by honest advice and full knowledge.”). Unlike the deliberative process privilege, the presidential communications privilege “applies to documents in their entirety, and covers final and post-decisional materials as well as pre-deliberative ones.” *In re Sealed Case*, 121 F.3d at 745.

We reasonably foresee that disclosure would harm an interest protected by exemption 5. The materials that have been withheld under the presidential communications privilege of Exemption 5 reflect confidential presidential decisionmaking and deliberations and were solicited and received by White House advisers and their staff in the course of performing their function of advising the President on official government matters. The materials are the result of frank and open discussions and their contents have been held confidential by all parties. Public dissemination of these materials would expose the presidential decisionmaking process in such a way as to discourage candid discussion, and thereby undermine presidential decisionmaking.

Portions of the enclosed documents have been redacted pursuant to Exemption 6 of the FOIA (5 U.S.C. § 552(b)(6)) because they fit certain categories of information:

Email address

Phone Number

Exemption 6 allows an agency to withhold “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The courts have held that the phrase “similar files” involves all information that applies to a particular person. *Hertzberg v. Veneman*, 273 F. Supp. 2d 67, 85 n.11 (D.D.C. 2003).

To determine whether releasing requested information would constitute a clearly unwarranted invasion of personal privacy, we are required to perform a “balancing test.” This means that we must weigh the individual’s right to privacy against the public’s right to disclosure.

- (1) First, we must determine whether the individual has a discernable privacy interest in the information that has been requested.
- (2) Next, we must determine whether release of this information would serve “the public interest generally” (i.e., would “shed light on the performance of the agency’s statutory duties”).
- (3) Finally, we must determine whether the public interest in disclosure is greater than the privacy interest of the individual in withholding.

The information that we are withholding consists of email addresses and phone numbers of third parties and military members, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in it. Additionally, we have determined that the disclosure of this information would shed little or no light on the performance of the agency’s statutory duties and that, on balance, the public interest to be served by its disclosure does not outweigh the privacy interest of the individuals in question, in withholding it. Nat’l Ass’n of Retired Fed. Employees v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989).

In summation, we have determined that release of the information that we have withheld would constitute a clearly unwarranted invasion of the privacy of these individuals, and that it therefore may be withheld, pursuant to Exemption 6.

Tonya Kirksey, Government Information Specialist, is responsible for making this decision.

Fees

We do not bill requesters for FOIA processing fees when their fees are less than \$50.00, because the cost of collection would be greater than the fee collected. (see 43 C.F.R. § 2.37(g)). Therefore, there is no billable fee for the processing of this request.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

The National Archives and Records Administration
Office of Government Information Services
8601 Adelphi Road- OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

Appeals

You may appeal this decision to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 90 workdays** from the date of this final letter responding to your FOIA request. Appeals arriving or delivered after 5 PM Eastern Time, Monday through Friday, will be deemed received on the next workday. **Your appeal must be made in writing** and addressed to:

Attn: FOIA/Privacy Act Appeals Officer
U.S. Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS6556 MIB
Washington, D.C. 20240
Fax: 202-208-6677

E-mail: FOIA.Appeals@sol.doi.gov

You must include with your appeal copies of all correspondence between you and the Office of the Secretary concerning your FOIA request, including a copy of your original FOIA request and the response letter. You must also include, in as much detail as possible, an explanation of why you believe the Office of the Secretary's response was in error. Failure to include this documentation with your appeal will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Officer determines (in her sole discretion) that good cause exists to accept the defective appeal. All communications concerning your appeal, including envelopes, should be clearly marked with the words "FREEDOM OF INFORMATION APPEAL." The appeal should include your name, mailing address, daytime telephone number (or the name and telephone number of an appropriate contact), email address, and fax number (if available) in case the Department needs additional information or clarification. For more information on FOIA administrative appeals, including how the Department will respond to your appeal, please refer to Subpart H of the Department's FOIA regulations, 43 C.F.R. § 2.57-§ 2.64.

You may also seek dispute resolution services from our FOIA Public liaison, Tony Irish, by email at os_foia@ios.doi.gov , or by phone at 202-513-0765.

If you have any questions about our response to your request, you may contact us by phone at 202-513-0765, by fax at 202-219-2374, by email at os_foia@ios.doi.gov , or by mail at U.S. Department of the Interior, 1849 C Street, NW, MS-7328, Washington, D.C. 20240.

Sincerely,

Tonya Kirksey
Office of the Secretary
FOIA Office

Electronic Enclosure